

# The 'standard of civilization' in international law

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# ***The ‘Standard of Civilization’ in International Law: Intellectual Perspectives from Pre-War Japan*<sup>\*†</sup>**

*Mohammad Shahabuddin*<sup>\*\*</sup>

## **Abstract**

This paper establishes the normative connection between Japan’s responses to regional hegemonic order prior to the nineteenth century and its subsequent engagement with the European standard of civilization. I argue that the Japanese understanding of the ‘standard of civilization’ in the nineteenth century was informed by the historical pattern of its responses to hegemony and the discourse on cultural superiority in the Far East that shifted from Sinocentrism to the unbroken Imperial lineage to the national-spirit. Although Japanese scholars accepted and engaged with the European standard of civilization after the forced opening up of Japan to the Western world in the mid-nineteenth century, they did so for instrumental purposes and soon translated ‘civilization’ into a language of imperialism to reassert supremacy in the region. Through intellectual historiography, this narrative contextualizes Japan’s engagement with the European standard of civilization, and offers an analytical framework not only to go beyond Eurocentrism but also to identify various other loci of hegemony, which are connected through the same language of power.

## **Key words**

History and theory of international law, standard of civilization; imperialism; Eurocentrism; Far East

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<sup>†</sup> The scope of research for this article is limited to the extent that I have extensively relied on various secondary sources or translations of Japanese language primary texts. However, due care has been taken to ensure the authenticity and accuracy of all translations used in this article.

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*While the facts of the past are – to the degree that we can be objective about them – independent of our subjective preferences, the names and labels under which we organize these facts and plot our narratives cannot claim such objectivity. They are indicative of the judgments we make. ... Such judgments are inescapable in writing history.*<sup>1</sup>

## 1. INTRODUCTION

The standard history of the modernization of Japan and its ensuing semi-civilized status starts with the gunships of Commodore Matthew Perry, who was sent to Japan in 1853 by US President Millard Fillmore with a view to compelling Japan to open diplomatic relations between the two countries.<sup>2</sup> Perry secured the Treaty of Peace and Amity<sup>3</sup> in the same year without in fact using his cannons, paving the diplomatic way for US Consul General Townsend Harris to visit Japan in 1856. After a difficult negotiation, Harris concluded the Treaty of Commerce and Navigation with clauses on extraterritoriality, unilateral most-favoured-nation treatment and restrictions on tariff autonomy. These treaties would become known as ‘unequal treaties’. In his negotiations, Harris frequently supported his demands with reference to various provisions of the law of nations; his Japanese counterparts hardly knew what he was referring to.<sup>4</sup> It is, therefore, no surprise that any history of international law in Japan begins with these nineteenth-century European encounters. Although there is thick literature on the ‘pre-modern’ international order in the Far East,<sup>5</sup> the normative connection between Japan’s various responses to this order, on the one hand, and its engagement with the

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<sup>1</sup> D. Chakrabarty, ‘The Muddle of Modernity’, 116 *The American Historical Review*, no. 3 (2011) at 672.

<sup>2</sup> See, for example, S. Kuriyama, ‘Historical Aspects of the Progress of International Law in Japan’, 1 *Japan Annual of International Law* (1957), at 1.

<sup>3</sup> *Ibid.*, at 1. This treaty was soon followed by similar treaties with Britain in 1854, and Russia in 1855.

<sup>4</sup> M. E. Cosenza (ed.), *The Complete Journal of Townsend Harris* (1930), at 507-513.

<sup>5</sup> See, for example, Y. Onuma, ‘When Was the Law of International Society Born? An Inquiry of the History of International Law from an Intercivilizational Perspective’, 2 *Journal of the History of International Law* (2000), at 1-66; Y. Onuma, *A Transcivilizational Perspective on International Law: Questioning Prevalent Cognitive Frameworks in the Emerging Multi-polar and Multi-civilizational World of the Twenty-first Century* (2010); S. Yamauchi, ‘Civilization and International Law in Japan during the Meiji Era (1868-1912)’, 24 *Hitotsubashi Journal of Law and Politics*, no. 2 (1996), at 1-25; M. Yanagihara, ‘Introduction: The Role of Prominent Jurists in Japan’s Engagement with International Law, 1853-1945’, 56 *Japanese Yearbook of International Law* (2013), at 95-121; M. Yanagihara, ‘Japan’s Engagement with and Use of International Law, 1853-1945’, in H. Steiger and T. Marauhn (eds), *Universality and Continuity in International Law* (2011), at 447-470; M. Yanagihara, ‘Japan’, in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012), at 475-499; K. Akashi, ‘Japan-Europe’, in B. Fassbender and A. Peters *The Oxford Handbook of the History of International Law* (2012), at 724-743; K. Akashi, ‘Japanese “Acceptance” of the European Law of Nations: A Brief History of International Law in Japan c. 1853-1900’, in M. Stolleis and M. Yanagihara (eds), *East Asian and European Perspectives on International Law* (2004), at 1-21; S. Kuriyama, ‘Historical Aspects of the Progress of International Law in Japan’, 1 *Japan Annual of International Law* (1957), at 1-5; T. Kanae, ‘Japan’s Early Practice of International Law in Fixing Its Territorial Limits’, 22 *Japanese Annual of International Law* (1978), at 1-20; H. Lam, ‘Learning the New Law, Envisioning the New World: Meiji Japan’s Reading of Henry Wheaton’, 56 *Japanese Yearbook of International Law* (2013), at 4-36; H. Otsuka, ‘Japan’s Early Encounter with the Concept of the “Law of Nations”’, 13 *Japanese Annual of International Law* (1969), at 35-65; F. Ito, ‘One Hundred Years of International Law Studies in Japan’, 13 *Japanese Annual of International Law* (1969), at 19-34; K. Lee, ‘The “Reception” of European International Law in China, Japan and Korea: A Comparative and Critical Perspective’, in H. Steiger and T. Marauhn (eds), *Universality and Continuity in International Law* (2011), at 419-446.

nineteenth-century European notion of the standard of civilization, on the other, is not adequately spelled out.

This paper addresses this gap. I demonstrate that what appears as a straightforward application of European international law and the standard of civilization in Japan's late-nineteenth century imperial projects was in fact shaped by a long-standing process of Japan's historical engagement with a system of cultural hierarchy in the regional order. The Japanese understanding of the standard of civilization in the nineteenth century was informed by the historical pattern of its responses to hegemony and the discourse on cultural superiority in the Far East that shifted from Sinocentrism to Japan's uniquely unbroken Imperial lineage to the notion of national-spirit (*kokutai*). Although Japanese scholars accepted and engaged with the European standard of civilization after the forced opening up of Japan to the Western world in the mid-nineteenth century, they did so for instrumental purposes and translated 'civilization' into a language of imperialism to reassert supremacy in the region.

The notion of 'civilization' adopted different meanings at different junctures of history.<sup>6</sup> Given that 'civilization', as a political language of power, has always been external to the ordinary ways of living in any society and, therefore, an elite construction, here I refrain from venturing into depicting any 'true meaning' of civilization.<sup>7</sup> Instead, my argument is that the Japanese discourse on cultural superiority historically engaged with dominant ideologies and deconstructed them to assert Japanese superiority – practices that date back to long before the European encounters in the nineteenth century.

Therefore, to properly appreciate Japan's emergence as an imperial power in the Far Eastern regional order, its military aggression in successive World Wars, and the role of international law in such imperial projects – all using the European language of the standard of civilization,<sup>8</sup> it is imperative to understand Japan's pre-modern engagements and responses to various hegemonic orders defined by the notion of cultural superiority. This is neither to claim any causal or linear relationship between various pre-war Japanese ideologies and Japan's late-nineteenth and early-twentieth century imperialism,<sup>9</sup> nor to argue that Japan's imperialism vis-à-vis its Asian neighbours was the product of any particular aspect of Japanese culture. Instead, this paper highlights the structure within which Japan constantly engaged with, challenged, and deconstructed the dominant ideas in various pre-war epochs and the way such engagements offer a useful framework to understand Japan's encounter with the nineteenth-century European notion of the standard of civilization.

This contextualization of Japanese encounter with the European notion of the standard of civilization, thus, offers an analytical framework not only to go beyond Eurocentrism in critiquing international law and its imperial projects but also to identify various other systems of hegemony and the way they engaged with European imperialism. The dynamic process of

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<sup>6</sup> For a detailed discussion on the evolution of the concept of 'civilization', see L. O. Tarazona, 'The Civilized and the Uncivilized', in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012), at 917-942.

<sup>7</sup> Cf. G. W. Gong, *The Standard of 'Civilization' in International Society* (1984); Schwarzenberger, 'The Standard of Civilization in International Law', 17 *Current Legal Problems* (1955), at 212-34. See also, Duara, 'The Discourse of Civilisation and Pan-Asianism', 12 *Journal of World History*, no. 1 (2001), at 99.

<sup>8</sup> Note that during the interwar period, Japanese foreign policies gradually moved towards pan-Asianism (*Asia-shugi*), but the underlying notion of 'civilizing mission' continued to justify Japan's leadership role in Asia.

<sup>9</sup> Although such connections are commonly made. See, for example, M. Maruyama, *Thought and Behaviour in Modern Japanese Politics*, ed. and trans. I. Morris (1969 [1963]).

crafting new norms of domination as ‘civilization’ in the regional hegemonic order is also highlighted in the process. Far from being blotted out by the European standard of civilization imposed through colonization or imperialism, the regional hegemonic systems continued to translate the notion of ‘civilization’ into local contexts, for the same imperial purposes. In this sense, the narrative of the standard of civilization in international law from Japanese intellectual perspectives offers a framework for further research into other pre-colonial regional orders to examine ways in which the structures of those orders inform present-day regional asymmetric power relations. Here lies the general normative relevance of this project beyond the specific context of Japan.

## 2. JAPAN’S NORMATIVE RESPONSE TO ASYMMETRIC POWER RELATIONS: HISTORICAL BACKGROUND

### 2.1. Engagements with the Middle Kingdom

In Confucian philosophy, the ruler is the only son of heaven, with heaven’s mandate to lead the people of the world, and the centre of civilization for all humanity.<sup>10</sup> Rulers throughout the world must therefore obey the Chinese emperor.<sup>11</sup> However, given that the emperor’s influence in reality had certain geographical limits, people outside the sphere of such influence were known as ‘barbarians’ (*yidi* in Chinese or *iteki* in Japanese) in contrast to the ‘central flowering’ (*zhonghua* in Chinese or *chuuka* in Japanese) of Chinese culture.<sup>12</sup> As Yasuaki Onuma demonstrates, there was no question of equality between the emperor and other rulers: all relations were subject to rules, customs and rituals set by the Middle Kingdom, not to treaties between the parties.<sup>13</sup> Rulers in other jurisdictions could not designate themselves as emperor, though some did so domestically.<sup>14</sup>

Confucianism was introduced to Japan in the fifth century<sup>15</sup> and with it came the Sinocentric tribute system.<sup>16</sup> China – the home of Confucianism – was seen as not only far more powerful than Japan but also superior in the realm of thought and institutions, which were therefore imported to Japan.<sup>17</sup> Their shared history went back further: the Chinese dynastic history *Wei Zhi* (ca. 297), had a discussion on the ‘Wa people’ (the Japanese) in the section ‘*Dongyi zhuan*’ (‘Accounts of the Eastern Barbarians’).<sup>18</sup> Successive rulers of Japan,

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<sup>10</sup> H. Watanabe, *A History of Japanese Political Thought 1600–1901*, trans. David Noble (2012 [2010]), at 24.

<sup>11</sup> Onuma, *supra* note 5, at 12. See also, Masaharu Yanagihara, ‘Japan’, in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012), at 476–477.

<sup>12</sup> Watanabe, *supra* note 10, at 25.

<sup>13</sup> Onuma, *supra* note 5, at 12.

<sup>14</sup> *Ibid.*, at 17.

<sup>15</sup> W. Zhang, *Fukuzawa Yukichi: The Pioneer of East Asia’s Westernization with Ancient Confucianism* (2010), at 26.

<sup>16</sup> Onuma, ‘“Japanese International Law” in the Pre-war period – Perspectives on the Teaching and Research of International Law in Pre-war Japan’, 29 *The Japanese Annual of International Law* (1986), at 23–24.

<sup>17</sup> *Ibid.*, at 24.

<sup>18</sup> R. Tsunoda and L. C. Goodrich, trans. ‘History of the Kingdom of Wei (Wei zhi) ca. 297 C.E.’, in W. T. de Barry, D. Keene, G. Tanabe and P. Varley (eds), *Sources of Japanese Tradition*, 2<sup>nd</sup> edn, vol. I (2001), at 6–8.

appointed by the Chinese ruler, paid tribute to China in order to strengthen and sanctify their authority.<sup>19</sup> Contemporary Japanese scholars accepted this subordinate position as a crude, if uncomfortable, reality. Satoo Naokata (1650–1719) wrote: ‘Perhaps the appellation of barbarian is not one to be welcomed with pride or joy, but if one is born in a barbarian land, there is little that can be done.’<sup>20</sup>

Nevertheless, in the seventh century, Japanese rulers began to challenge the notion of Chinese superiority, albeit for domestic political convenience. An official letter from the Japanese government to the Chinese Emperor Yang-ti of the Sui dynasty addressed him as ‘the Son of Heaven (*tianzi*) of the country where the sun sets’ while referring to the Japanese emperor as ‘the Son of Heaven of the country where the sun rises’.<sup>21</sup> As Masaharu Yanagihara notes, this letter angered the Chinese emperor, who by custom should be the only Son of Heaven.<sup>22</sup> Also, from the seventh century onward, Japanese rulers refused to be appointed by the Chinese emperor. When Yoshimitsu Ashikaga was appointed monarch of Japan by the Chinese emperor, the matter was seen rather as an exception; political and intellectual elites criticized Ashikaga as being too submissive to China.<sup>23</sup>

The formal relationship between China and Japan ended in the middle of the sixteenth century when Japan demanded equal status in diplomatic relations and China, viewing the rest of the world as subordinate, refused.<sup>24</sup> Japan did, though, accept Confucianism as the normative framework for its relations with other neighbouring countries, because it perfectly paved the way for Japan to make similar claims against them.<sup>25</sup> This ‘small-Sinocentrism’ initially developed between 502 and 600.<sup>26</sup> As Kinji Akashi notes, a king of Wa invaded and conquered the northern and southern parts of Japan during this period and subordinated the local people there to the Wa people, so that ‘the king of Wa let himself be at the conceptual center of the Japanese styled Sinocentric order’.<sup>27</sup> Similarly, Japan claimed superiority over Korea, premised on Japan’s equality with China and Korea’s tributary position with respect to China.<sup>28</sup> Korean authorities never recognized the Japanese claim of superiority, demanding at least equal treatment in diplomatic relations.<sup>29</sup>

Another peripheral entity of the Sinocentric system was the Ryukyu Kingdom, the present-day Okinawa prefecture.<sup>30</sup> Japan developed an active trade relationship with Ryukyu in the early fifteenth century, and the King of Ryukyu occasionally sent gifts to the Ashikaga

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See also, R. Tsunoda and L. C. Goodrich, *Japan in the Chinese Dynastic Histories: Later Han through Ming Dynasties* (1851).

<sup>19</sup> Onuma, *supra* note 16, at 24.

<sup>20</sup> Satoo Naokata, *Chuugoku ronshuu*, quoted in Watanabe, *supra* note 10, at 279.

<sup>21</sup> See, Onuma, *supra* note 5, at 13. Also, Yanagihara, *supra* note 14, at 475.

<sup>22</sup> Yanagihara, *supra* note 11, at 475.

<sup>23</sup> Onuma, *supra* note 16, at 24, 26.

<sup>24</sup> *Ibid.*, at 24.

<sup>25</sup> *Ibid.*, at 26.

<sup>26</sup> See, K. Akashi, ‘Japan-Europe’, in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012), at 727.

<sup>27</sup> *Ibid.*

<sup>28</sup> Onuma, *supra* note 16, at 24–25.

<sup>29</sup> *Ibid.*, at 25.

<sup>30</sup> For a debate on whether Ryukyu should be treated as an *ikoku* (foreign land) or *iiki* (fringe land but not a domestic area) from Japanese perspectives, see Yanagihara, *supra* note 11, at 479–480.

Shogun, who considered these gifts tribute.<sup>31</sup> As Ashikaga's power declined and a bloody civil war ensued, Ryukyu missions to the Shogunate ended. When Hideyoshi Toyotomi reunified the nation, the Ryukyuan king congratulated him but ignored his order to join the Japanese military campaign against Korea.<sup>32</sup> The Shimazu family, the local feudal lord of the Satsuma clan in southern Kyushu who controlled Japan's trade relations with Ryukyu and Korea, took advantage of the disobedience to take military measures against Ryukyu.<sup>33</sup> With the authorization of the succeeding Tokugawa Shogunate in 1609, the Satsuma clan dispatched troops to Okinawa. The king surrendered, swore allegiance to the Lord of Satsuma, and accepted Satsuma's control over the Ryukyuan economy.<sup>34</sup> To avoid direct confrontation with China, Japan officially kept Ryukyu independent, but in practice successive kings of Ryukyu were 'allowed to rule their state only in accordance with Satsuma's direction and under the strict supervision of its inspectors'.<sup>35</sup>

Despite the practical relevance of Confucianism, Tokugawa rulers saw its demand for morality-based rule as a potential threat to their entire social and political order, which was based on hereditary status and military might.<sup>36</sup> As Ekiken Kaibara wrote, '[i]f one adopted the Chinese way, it would be difficult to conduct warfare in the Japanese manner. Japan is a martial nation; it would be impossible to triumph here following the undissembling and soft customs of the Chinese, for those are not the customs of Japan.'<sup>37</sup> Many scholars in the early eighteenth century agreed, believing that the samurai have the way of the samurai, which is appropriate for Japan. The Way of the sages of a foreign land, i.e., China, would not be.<sup>38</sup>

Although some Japanese Confucians, such as Nakae Tōju (1608–48), Ito Jinsai (1627–1705), and Ogyū Sorai (1666–1728), attempted to reconcile Confucianism with Japanese military custom,<sup>39</sup> a more fundamental claim came from the military affairs scholar Yamaga Sokō (1622–85), who argued that the real world and scholarship are two different things: the purpose of the 'sacred teachings' was to 'enable samurai and their leaders to learn the patterns of behaviour and skills needed in their daily life as warriors, so that they could achieve victory and success'.<sup>40</sup> Excelling in martial arts is the *raison d'état* for practising Confucianism; by implication, 'a warrior would have mastered the "sacred teaching" if he

<sup>31</sup> T. Kanae, 'Japan's Early Practice of International Law in Fixing Its Territorial Limits', 22 *The Japanese Annual of International Law* (1978), at 13. See also, Akashi, *supra* note 26, at 727-728.

<sup>32</sup> *Ibid.*

<sup>33</sup> R. I. Hellyer, *Defining Engagement: Japan and Global Contexts, 1640-1868* (2009), at 1.

<sup>34</sup> Kanae, *supra* note 31, at 13.

<sup>35</sup> *Ibid.* However, Yanagihara notes that the status of Ryukyu in relation to Tokugawa Japan remains an unresolved issue among Japanese historians. See, Yanagihara, *supra* note 11, at 482-483.

<sup>36</sup> Watanabe, *supra* note 10, at 86-88. See also, Zhang, *supra* note 15, at 27.

<sup>37</sup> Ekiken Kaibara, *Bukun* (Military Lessons), 1716, quoted in Watanabe, *supra* note 10, at 89. Kaibara died in 1714 and *Bukun* was published posthumously by his disciple Takeda Shunan (1661-1745).

<sup>38</sup> For example, the military scholar Tsugaru Koodō (1682–1729) openly advocated 'military rule' as opposed to the 'moral rule' of the Confucians, arguing that foreign lands are ruled by 'cultural virtues', while Japan, because of its topography and the character of its soil and water, is ruled by 'military virtues'. See, Tsugaru Koodō, *Buji teiyō*, cited in Watanabe, *supra* note 10, at 96. Others rejected the relevance and utility of archaic, foreign teachings to Japanese governance. Matsudaira Nobutsuna (1596–1662), for example, suggested ignoring classic Confucian texts in favour of the stratagems of Tokugawa Iyasu (Gongen-sama) and of men who know the laws handed down by the Tokugawa regime. See, Ooshima Toyonaga, *Nobutsuna ki*, cited in Watanabe, *supra* note 10, at 79.

<sup>39</sup> For a detailed account, see, Watanabe, *supra* note 10 at 89-90, 103, 106-118, 125, 161-164. See also, Zhang, *supra* note 15, at 26-28.

<sup>40</sup> Yamaga Sokō, *Haishō zanpitsu*, cited in Watanabe, *supra* note 10, at 90.

gained the military and tactical knowledge required to perform his duties'.<sup>41</sup> It follows that Japan, being a martial nation, has also acquired the necessary degree of Confucian civilization. Indeed, Sokoo at one point claimed that 'Japan was actually the centre of the world and perforce possessed from the beginning the essence of the Way spoken of by the Confucians', and 'even if it wasn't exactly in accordance with the Confucian teachings, it was fine for Japan to do things in its own way, nor should it feel inferior to China'.<sup>42</sup>

Thus, by the seventeenth century, Japan not only challenged China's position as the centre of the universe but was openly questioning the superiority of Confucianism. As we shall see in the following section, Japanese scholars soon developed a new meaning of cultural supremacy that broke with Chinese ideological hegemony for the first time in many centuries.

## 2.2. The Divine Kingdom and the new sense of superiority

The resistance of the Japanese intelligentsia to the notion of 'Middle Kingdom' based on Confucian ideology entered a new phase with the emergence of National Learning or *Kokugaku*. The *Kokugaku* attack on Confucianism, as Masao Maruyama notes, was paradoxically facilitated by the Confucian scholar Sorai's methodology and critique of Neo-Confucian thoughts.<sup>43</sup> For some time, Japanese Confucians tried to contextualize Confucianism within the Japanese culture and, thereby, reconcile Confucianism with an emerging sense of national pride. However, beginning in the seventeenth century, the already-fragile foundation of Confucianism in the Japanese society began to collapse before more nationalist ideology primarily based on the ancient Japanese Way of the Divine Kingdom and the unbroken lineage of the Imperial family. *Kokugaku* criticized the Confucian worldview as 'too normative oriented, too oppressive to human emotions and sentiments, and too submissive to China'.<sup>44</sup> *Kokugaku* scholars such as Hirata Atsutane (1776–1843) claimed that Japan's unbroken Imperial line (*bansei ikkei*) demonstrated that this island empire was the 'Land of Gods'. This made Japan the Middle Kingdom and superior to China, where dynastic changes and 'Tartar rule' were frequent,<sup>45</sup> and laid the foundation for Japan's claim to leadership in Asia.

Long before this, Kitabatake Chikafusa (1293–1354) had explained Japan's unique position as a 'divine country' in his *A Chronicle of Gods and Sovereigns (Jinnō Shōtōki)*: 'The heavenly ancestor it was who first laid its foundations, and the Sun Goddess left her descendants to reign over it forever and ever. This is true only of our country, and nothing similar may be found in foreign lands.'<sup>46</sup> But after the mid-seventeenth century the concept of the divine realm and the 'ancient Way' added a political meaning, as a source of Japan's superiority vis-à-vis China. For example, according to Motoori Norinaga (1730–1801), the

<sup>41</sup> Watanabe, *supra* note 10, at 90.

<sup>42</sup> Yamaga Sokoo, *Chuuchō jūjitsu*, cited in Watanabe, *supra* note 10, 90–91.

<sup>43</sup> See generally, M. Maruyama, *Studies in the Intellectual History of Tokugawa Japan*, translated by Mikiso Hane (Princeton: Princeton University Press/ Tokyo: University of Tokyo Press, 1974).

<sup>44</sup> Onuma, *supra* note 16, at 26.

<sup>45</sup> S. Saaler, 'Pan-Asianism in Modern Japanese History', in S. Saaler and J. V. Koschmann (eds), *Pan-Asianism in Modern Japanese History: Colonialism, Regionalism and Borders* (2007), at 3.

<sup>46</sup> K. Chikafusa, *A Chronicle of Gods and Sovereigns*, trans. H. Paul Varley (1980), at 49.



ancient Way signified the great and honourable customs of august Japan and comprised all aspects of human living of the age of the gods and the first legendary emperors of Japan.<sup>47</sup> Norinaga asserted that the early emperors governed by the ancient Way of the gods, and made decisions by inquiring ‘after the minds of the gods through divination. In no matters did [they] rely on the wisdom of [their] intellect; this is the true Way and the correct manner of acting.’<sup>48</sup> This was a drastic deviation from the Confucian reliance on the virtue of the ruler, and the emperor’s officials and the general population followed his example: ‘They all respected the imperial court, and faithfully observed the regulations that came from above. They did not in the least try to rely on their own rational intellect, and so both high and low were in harmony and the government of the empire flourished.’<sup>49</sup>

To Norinaga’s chagrin, the Confucian teachings imported from China overshadowed the ancient Way of managing state affairs, and rationality and individual thinking gradually permeated public opinion. Norinaga blamed Japan’s fall from grace into corruption and degradation on the spread of Confucian thought and ‘Sinicization’ in contemporary society,<sup>50</sup> and ‘in the end, there was no difference at all between the evil customs of the Chinese barbarians and our own’.<sup>51</sup> Confucian scholars, such as Sorai and Dazai, naturally came under his harsh criticism in this regard:

[T]hese men deemed it wise to speak as if China alone were worthy of respect, to claim that it is superior in all things, and to hold our imperial land in extremely low regard, insisting that it is a barbarous country. ... Although they too were fortunate enough to have been born in this Imperial land and to have been exposed to the scripture of the [Japanese Shinto] Gods ... they failed to comprehend and realize that the Way of the Gods [Shinto] is superior to the Ways of foreign lands, and that it is truly the grand and just Way. They even disparaged and villified it. What could they have been thinking of?<sup>52</sup>

Maruyama argues that this criticism of Sorai is not completely just, for he never called China the ‘most superior land’, but there is no denying that the Sorai School’s views on Shintoism served to mediate negatively between it and National Learning.<sup>53</sup>

For Norinaga, the essential reason Chinese Confucian learning was incompatible with the Japanese Way was Confucianism’s underlying assumption about the source of legitimacy of power. A Confucian ruler is to be obeyed because of his virtue and correctness; eventually someone will usurp the throne, asserting that he himself is correct and virtuous. With this analogy, Norinaga concluded that ‘the Way in China is nothing but devices to seize someone else’s country, and schemes to protect it from being seized’,<sup>54</sup> characterizing the Confucian sages as mere rebels.<sup>55</sup> By Norinaga’s time, China had already experienced repeated overthrowing of imperial rules, and was then ruled by the non-Chinese, nomadic Manchus of the Qing dynasty (1644–1912). Japan’s continued loyalty to the emperor was unique and

<sup>47</sup> Watanabe, *supra* note 10, at 238.

<sup>48</sup> Brownlee, ‘The Jeweled Comb-Box: Motoori Norinaga’s *Tamakushige*’, 43 *Monumenta Nipponica*, no. 1 (1988), at 59.

<sup>49</sup> *Ibid.*

<sup>50</sup> Watanabe, *supra* note 10, at 248.

<sup>51</sup> Brownlee, *supra* note 48, at 59.

<sup>52</sup> *Zooho Motori Norinaga zenshuu*, I, at 54, cited in Maruyama, *Supra* note 43, at 154.

<sup>53</sup> Maruyama, *supra* note 43, at 154.

<sup>54</sup> S. Nishimura, ‘The Way of Gods: Motoori Norinaga’s *Naobi no Mitama*’, 46 *Monumenta Nipponica*, no. 1 (1991), at 29.

<sup>55</sup> *Ibid.*, at 33–34. See also, Maruyama, *supra* note 43, at 150.

became a common reference point even in novels to mark the cultural superiority of Japan over China.<sup>56</sup>

By this logic, the uniqueness of the Japanese Imperial continuity and its resultant superiority over China resided in its culture of loyalty towards the emperor irrespective of his virtue: ‘no matter how virtuous the people below him may be, they cannot replace him, and thus the distinction between sovereign and subject is firmly and immutably fixed for tens and hundreds of thousands of years to come, until the end of time.’<sup>57</sup> Confucianism was irrelevant; Japan’s claim to superiority was based on the eternal unbroken Imperial lineage.

Given that Japanese superiority was based on its own ancient Way, Norinaga had no difficulty in seeing this as the universal standard. This ancient Way, for him, was ‘the Way of mankind’ – a model for the entire human race: ‘Extending over Heaven and Earth, the true Way is the same in every single country, but it has been transmitted correctly in our Imperial Land alone. In other countries, its transmission was already lost in ancient times.’<sup>58</sup> Whereas the Neo-Confucian scholar Asami Keisai (1652–1715) argued that one’s own country is always the Middle Kingdom and other countries are the ‘barbarians’, thus Japan was the Middle Kingdom regardless of any standard of superiority or inferiority,<sup>59</sup> Norinaga believed in the inherent superiority of the Japanese Way beyond cultural relativism. Norinaga held that if one truly believed in the teachings of the imperial land (*Kookoku*, i.e., Japan), then one should also accept that the teachings of other lands are indisputably false, hence people from there should also believe in the teachings of the imperial land.<sup>60</sup> In his words: ‘our country is the land where the Sun Goddess originated, and where her imperial line still reigns. It is the source and foundation of all countries, and all other countries should honour Japan and submit to it; this would be in accordance with the true Way.’<sup>61</sup> Hiroshi Watanabe asserts that from the late Tokugawa period until 1945, the phrase ‘imperial land’, which Norinaga coined, was accepted and used in almost every political persuasion, for it symbolized a sense of ‘national pride, an assertion of Japan’s unique character as a nation ruled by an unbroken lineage of emperors since the farthest reaches of antiquity’.<sup>62</sup>

The immense popularity of *Kokogaku* thinkers such as Norinaga deeply influenced the pro-Imperial Mito School of Confucianism and compelled them to rethink Confucian learning. As a result, Mito scholars in reviving Confucian moral culture not only infused elements of *Kokugaku* myth but also asserted that Japan’s native Way was primary and esteemed Chinese moral norms were merely a supplement.<sup>63</sup>

### 2.3. ‘National-spirit’ to resist Christian invasion

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<sup>56</sup> See, Hiraga Gennai, *Fuuryuu Shidooken Den* (The Stylish Life of Shidooken), 1763, quoted in Watanabe, *supra* note 10, at 289.

<sup>57</sup> Motoori Norinaga, *Kuzubana*, quoted in Watanabe, *supra* note 10, at 245.

<sup>58</sup> Brownlee, *supra* note 48, at 45.

<sup>59</sup> See, Watanabe, *supra* note 10, at 280.

<sup>60</sup> Motoori Norinaga, *Toomonroku*, quoted in Watanabe, *supra* note 10, at 242.

<sup>61</sup> Brownlee, *supra* note 48, at 48.

<sup>62</sup> Watanabe, *supra* note 10, at 240.

<sup>63</sup> B. T. Wakabayashi, *Anti-Foreignism and Western Learning in Early-Modern Japan* (1986), at 138.

Mito scholars in the late eighteenth and early nineteenth century encountered a more drastic force – early signs of European imperialism. With the arrival of new technologies and the improved knowledge of world geography supplied by Western learning, most assumptions of the Sinocentric world order were dispelled. As Tadashi Wakabayashi notes, Japanese thinkers in all traditions welcomed this advanced Western knowledge partly because it discredited Chinese claims of cultural superiority,<sup>64</sup> though its marked superiority suggested a new peril. By the early nineteenth century, Mito thinkers, most prominently Seishisai Aizawa (1781–1863) had to respond to this emerging threat of European imperialism towards Japan.

Aizawa's *New Theses* served mainly as a policy work for the Tokugawa Feudal System (*Bakufu*) to endorse its anti-foreigner policy (*Jooi*) and prescribe a long-term strategy to defend Japan against the imminent threat of European imperialism.<sup>65</sup> The *Bakufu* policy of expelling foreigners by force emerged in its final form with the Expulsion Edict of 1825, which was triggered by the fear of Christianity.<sup>66</sup> *Tokugawa* elites were also concerned that new international ties would undermine their feudal privileges.<sup>67</sup> Sharing the *Bakufu* hatred for Europeans and their religion, and suspicion about the Europeans' aggressive venture, Aizawa easily endorsed the expulsion policy. He saw *jooi* as sweeping away or eradicating what is culturally barbarian, 'an attempt to build barriers between Japanese commoners and foreigners'.<sup>68</sup> Earlier Mito Confucians stressed the need to edify those commoners to make them less susceptible to barbarian transformation; Aizawa and other nineteenth-century Mito thinkers advocated adding brute force and hard military action to this moral transformation.<sup>69</sup> They saw that Europeans would first win a reputation for benevolence with small acts of kindness, capture people's hearts and minds, propagate Christianity, and having set the premise find a convenient moment to conquer those people. 'Once beguiled by Christianity', he notes, the stupid commoners 'cannot be brought back to their senses. Herein lies the secret of the barbarian's success.'<sup>70</sup> Mito scholars disagreed on various other issues, but the entire Mito School shared Aizawa's suspicion of 'stupid commoners'.<sup>71</sup>

Aizawa's solution thus went beyond banning Christianity to transforming these untrustworthy commoners themselves, through a sense of national-spiritual unification – *kokutai*. While Tokugawa and Ch'ing writers used the term *kokutai* or *kuo t'i* to mean 'the nation's honour' or 'dynastic prestige', Wakabayashi argues that Aizawa's use in *New Theses* was significantly different, connoting 'the unity of religion and government' used by a ruler

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<sup>64</sup> Ibid., at 138.

<sup>65</sup> However, some foreigners were exempt: 'four gates' were held open for international trade. See, H. Lam, 'Learning the New Law, Envisioning the New World: Meiji Japan's Reading of Henry Wheaton', 56 *Japanese Yearbook of International Law* (2013), at 34-36.

<sup>66</sup> Note that wholesale seclusion has never been the case; Japan remained diplomatically and commercially engaged, especially with neighbouring countries. See, Hellyer, *supra* note 33, at 6. For a more recent take on this subject, see Yanagihara, *supra* note 11, at 477-481.

<sup>67</sup> Maruyama, *supra* note 43, at 352.

<sup>68</sup> Wakabayashi, *supra* note 63, at 54.

<sup>69</sup> S. Aizawa, *New Theses* (1825), trans. B. T. Wakabayashi in B. T. Wakabayashi, *Anti-Foreignism and Western Learning in Early-Modern Japan* (1986), at 55.

<sup>70</sup> Ibid., at 200.

<sup>71</sup> See, Maruyama, *supra* note 43, at 355-356.

to create spiritual unity and integration among his subjects and, thereby, transform a people into a nation.<sup>72</sup>

Aizawa believed that the loyalty of subjects for their ruler is the greatest moral precept of the cosmos, and affection between parent and child is the ultimate form of blessing within the realm. He wrote that these two sentiments ‘exist together between Heaven and Earth; they slowly and steadily seep into men’s hearts in all places and ears.’<sup>73</sup> The ancient sage kings understood and used this loyalty and filial devotion to rule and to uphold nature’s moral order among their people. Ever since earth became distinct from the firmament and men came into being, a Divine Line of Emperors descended from the Sun Goddess, Amaterasu, had ruled Japan, and no one had ever had evil designs on the throne.<sup>74</sup> This demonstrates, in Aizawa’s view, the indivisibility of politics and religion: religious rituals are a means of political rule, and political rule is identical to ethical inculcation. The people’s allegiances were undivided; they had simply to revere Amaterasu and Her Divine Imperial Line to create both spiritual unity among the people and the union of Heaven and men.<sup>75</sup>

Thus, in *New Theses*, Aizawa attempted to unite the people with the Divine through a purpose-built religion and series of social ceremonies. These would address the prevalent lack of spirituality – which could breed Christianity – and renew the commoners’ consciousness about their ties to the Divine Land of Amaterasu.

These currents of thought, Wakabayashi claims, caused ‘the beginnings of national consciousness – over and above simple ethnic pride – in nineteenth century Japan’, with *New Theses*, coupled with the government’s policy of expulsion by force, signalling the emergence of proto-nationalism in Japan and a shift from the notion of a universal empire (i.e., Confucian China) to a nation-state (imperial Japan).<sup>76</sup> However, the perception of international relations remained predominantly hierarchical, in that neither the Confucians nor the *Kokogaku* or Mito scholars accepted a worldview based on the equality of nations.<sup>77</sup>

Aizawa’s *New Theses* lived much beyond his time: some of his ideas regarding the central role of religion as a *kokutai* became Meiji policy.<sup>78</sup> However, with the change of the late Tokugawa rulers’ approach to foreigners in the face of Commodore Perry’s warships and with the realization that Japan could not stand the European invasion that would come if it did not open up ports for foreign trade,<sup>79</sup> Aizawa himself discarded the rhetoric of expulsion of foreigners after the late 1850s.<sup>80</sup> In fact, Japan not only opened itself to Europe, but almost

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<sup>72</sup> Wakabayashi, *supra* note 63 at 13.

<sup>73</sup> Aizawa, *supra* note 69, at 152.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid. See also, M. Shahabuddin, ‘Nationalism, Imperialism, and Bandung: Nineteenth-Century Japan as a Prelude’, in L. Eslava, M. Fakhri and V. Nesiha (eds), *Bandung, Global History, and International Law: Critical Past and Pending Futures* (2017), at 97-99.

<sup>76</sup> See, Wakabayashi, *supra* note 63, at 9, 15, and 139. Cf. Maruyama, *supra* note 43, at 323-367.

<sup>77</sup> Onuma, *supra* note 16, at 26.

<sup>78</sup> Wakabayashi notes that the 1890 *Imperial Rescript on Education* borrows this sentence from the section entitled ‘What is Essential to a Nation’ (*kokutai*) in Aizawa’s *New Theses*: ‘All the people of the realm be of one heart and mind.’ Aizawa, *supra* note 69, at 262.

<sup>79</sup> See, H. Otsuka, ‘Japan’s Early Encounter with the Concept of the “Law of Nations”’, 13 *Japanese Yearbook of International Law* (1969), at 35-41; W. G. Beasley, *Japanese Imperialism 1894-1945* (1987), at 14-26.

<sup>80</sup> See, D. Keene and S. Aizawa, ‘A Plan for Tasks at Hand: Aizawa Seishisai’s “Jimusaku”’, 62 *Monumenta Nipponica*, no. 1 (2007), at 75-86; Wakabayashi, *supra* note 63, at 137.

totally transformed its state and society, facing new challenges and new notions of civilization and its standards, after the Meiji Restoration of 1868.

The foregoing three examples of Japanese engagements with the dominant ideas of the Middle Kingdom, the Divine Kingdom and the ‘national-spirit’ underscore the way Japan historically responded to hierarchical systems or imperial powers by constantly challenging and deconstructing the dominant ideas and asserting its own cultural superiority. This dynamic process of engaging with the regional hegemonic order offered the normative structure within which Japan managed, first, its encounter with the European notion of the standard of civilization in the nineteenth century and, later on, its imperial relationship with Asian neighbours. Against this historical background, in the following section we reflect on Japanese engagements with the nineteenth-century European standard of civilization through the writing of Fukuzawa.

### **3. FROM REGIONAL ORDER TO EUROPEAN INTERNATIONAL LAW: NOW CIVILIZATION IS SELF-DEFENCE**

Yukichi Fukuzawa (1835–1901) is one of the most influential intellectuals and social thinkers to have emerged from modern Japan. According to one author, he is even depicted as a ‘god’ in Japan, paradoxically by those who know little about his significance for nineteenth-century cultural, political, and economic history.<sup>81</sup> In 2013, a special issue of the *Japanese Yearbook of International Law* named Fukuzawa with his ‘marvellous efforts’ as one of ten jurists prominent in the reception, improvement or extension of modern European international law in Japan in 1853–1945.<sup>82</sup>

Fukuzawa was in his mid-thirties when the Meiji Restoration of 1868 dramatically transformed Japan’s political system. He was a harsh critic of the Tokugawa feudal system of lineage that had prevailed for more than two centuries. Fukuzawa had a deep understanding of Chinese learning, Japanese history, and especially Western learning, and believed that ‘the future direction of the new Japan would be determined by how the Japanese understood Western civilization, and the means by which they maintained balance while adopting from it’.<sup>83</sup> This belief was reinforced by his travels through Asia to Europe and the US even before 1868: he saw not only Western ways of life and the vitality and superior development of its civilization but also the miserable conditions of European colonies in Asia, such as India. He witnessed the fate of a country that lost its independence, and this knowledge and his apprehensions for Japan developed into *An Outline of a Theory of Civilization*, published in 1875.<sup>84</sup>

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<sup>81</sup> H. M. Hopper, *Fukuzawa Yukichi: From Samurai to Capitalist* (2005), at xiii.

<sup>82</sup> See, M. Yanagihara, ‘Introduction: The Role of Prominent Jurists in Japan’s Engagement with International Law, 1853–1945’, 56 *Japanese Yearbook of International Law* (2013), at 2-3; see also, S. Han, ‘Yukichi Fukuzawa (1835 – 1901) – Revisiting Fukuzawa from a Comparative Perspective’, 56 *Japanese Yearbook of International Law* (2013), at 37-69.

<sup>83</sup> I. Takenori, ‘Introduction,’ trans. Ry. Beville, in Y. Fukuzawa, *An Outline of a Theory of Civilization* (1875), trans. D. A. Dilworth and G. C. Hurst III (2008), at xiii.

<sup>84</sup> *Ibid.*, at xv. See also, Shahabuddin, *supra* note 75, at 100-104.

In *An Outline*, Fukuzawa depicts ‘civilization’ as concerning the development of the human spirit and the spiritual development of the people of a nation as a whole.<sup>85</sup> Beyond increasing comfort and luxury, civilization refines knowledge and cultivates virtue, elevating human life to a higher plane.<sup>86</sup> Fukuzawa’s theory of civilization, developed within a liberal evolutionary framework, asserted that human societies have to pass through different stages – the ‘ages of civilization’.<sup>87</sup> Eight years later, Lorimer would classify nations as civilized, barbarian, and savage on the basis of the standard of civilization.<sup>88</sup> However, Fukuzawa’s taxonomy curved towards civilization, unlike Lorimer, who now infamously confined the operation of international law to only the civilized nations.<sup>89</sup>

For Fukuzawa, the first stage of human progress is primitivity: men form communal groups to ensure their basic needs, but are powerless before the forces of nature. In the next stage, semi-developed civilization, men build houses, form communities, conduct largescale agricultural activities, and create the outward semblance of a state. And finally, there is the stage in which ‘men subsume the things of the universe within a general structure, but the structure does not bind them. Their spirits enjoy free play and are not credulous of old customs. ... They cultivate their own virtue and refine their own knowledge.’<sup>90</sup> According to Fukuzawa, this is what is meant by modern civilization: a leap far beyond the primitive or semi-developed stages.

Although Fukuzawa explicated the relativity embedded in the concept of civilization, he nonetheless acknowledged that the designations ‘civilized’, ‘semi-developed’, and ‘primitive’ have been universally accepted by people all over the globe, because ‘the facts are demonstrable and irrefutable’.<sup>91</sup> Though aware, like some of his contemporary critics of Western influence on Japanese culture, of the limitations and vices of European civilization, he would not leave Japan with no criteria for civilization by discarding the European standard.<sup>92</sup> Convinced that civilization was evolutionary and Europeans were at its highest level to date, Fukuzawa concluded that ‘in all countries of the world, be they primitive or semi-developed, those who are to give thought to their country’s progress in civilization must necessarily take European civilization as the criterion in making arguments, and must weigh the pros and cons of the problem in the light of it.’<sup>93</sup> Therefore Western civilization was the goal of Japanese progress.

However, Fukuzawa understood civilization essentially as a mode of self-defence. In an 1874 letter he wrote: ‘My sole aim ... is the preservation of our national independence.’<sup>94</sup> He meant preserving ‘national polity’, thought by many to be incompatible with civilization. Distinguishing ‘national polity’ from ‘political legitimization’ or ‘blood lineage’, he argued

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<sup>85</sup> Y. Fukuzawa, *An Outline of a Theory of Civilization* (1875), trans. D. A. Dilworth and G. C. Hurst III (2008), at 1.

<sup>86</sup> *Ibid.*, at 45.

<sup>87</sup> *Ibid.*, at 18.

<sup>88</sup> J. Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (1883), at 101.

<sup>89</sup> Han, *supra* note 82, at 49.

<sup>90</sup> Fukuzawa, *supra* note 85, at 18-19.

<sup>91</sup> *Ibid.*, at 17-18.

<sup>92</sup> *Ibid.*, at 20.

<sup>93</sup> *Ibid.*

<sup>94</sup> Cited in Takenori, *supra* note 83, at xix.

that the world had seen changes of political legitimation that did not change the blood lineage or affect national polity. Japan's centre of power had shifted more than once between the Imperial family and the military elites, but this change of political legitimation had never changed either the national polity or the blood lineage of the Imperial family. In sharp contrast with the *Kokugaku* and the Mito school, Fukuzawa believed that the essence of a nation is not an unbroken line of monarchy, but the preservation of its national polity, depending on which both political legitimation and blood lineage will flourish or flounder.<sup>95</sup> Therefore, he concludes,

Now the only duty of the Japanese at present is to preserve Japan's national polity. For to preserve national polity will be to preserve national sovereignty. And in order to preserve national sovereignty the intellectual powers of the people must be elevated. There are many factors involved in this, but the first order of business in development of our intellectual power lies in sweeping away credulity to past customs and adopting the spirit of Western civilization.<sup>96</sup>

With this shift in understanding of the key indicator of civilization, Fukuzawa not only contests the popular suspicion that civilization would hamper Japanese polity, but also contextualizes his proposition for internalizing the essence of European civilization within an instrumental framework.

As a corollary of this instrumental approach to civilization, Fukuzawa's theory uniquely localized the liberal universal notion of civilization. As a believer in evolutionary science, Fukuzawa saw it as the course of nature for the advanced countries to control the less advanced, and thus that Japan's backwardness compared to European civilization made it vulnerable. With backwardness threatening national polity, maintaining Japan's independence was his foremost concern.<sup>97</sup>

Fukuzawa saw realism as crucial in international affairs, where only two things count – in times of peace, trading goods and competing for profits; in times of war, taking up arms. In other words, 'the present world is a world of commerce and warfare'.<sup>98</sup> As such, people of different nations will be biased in favour of their respective countries. Patriots may not intend harm to other countries, but will indeed prioritize their own country's interest: 'it is the biased, partisan spirit that divides the globe into smaller sections and establishes within each section political factions, then calculates what benefits these political factions,' and therefore, 'it is clear that the ethic of impartial and universal brotherhood is not compatible with the ethic of patriotism and establishment of national independence'.<sup>99</sup>

Using the analogy of the *han* system of feudal Japan, abolished by the Meiji government in 1871, in which each *han* necessarily put its own interests above that of others, he told proponents of universal justice that their first goal should be to abolish national governments throughout the world. While there are countries with national governments, 'there can be no way to eliminate their self-interests. If there is no way to eliminate their self-interests, then we too must have our self-interests in any contacts with them. This is why partisanship and patriotism differ in name but mean the same thing.'<sup>100</sup> As Harry Parkes,

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<sup>95</sup> Fukuzawa, *supra* note 85, at 35-36.

<sup>96</sup> *Ibid.*, at 36-37.

<sup>97</sup> *Ibid.*, at 225.

<sup>98</sup> *Ibid.*, at 234.

<sup>99</sup> *Ibid.*, at 235.

<sup>100</sup> *Ibid.*, at 251.

British Consul-General in Japan from 1865 to 1882, rightly – though condescendingly – noted: ‘To the Meiji mind, international relations in the second half of the nineteenth century were based on a predatory system of might. ... international law was followed only insofar as it benefited a nation to do so and the strong ignored the law when it was to their advantage.’<sup>101</sup> With this idea of nationally situated partisan spirit, Fukuzawa thus fixed the building blocks of his theory of civilization: focus on internal spirit, not external aspects of civilization; progress on public knowledge rather than private virtue; and above all, preserve the national polity instead of emphasizing political legitimacy or the unbroken Imperial lineage.

Fukuzawa gradually became more radical and realist as Japanese history approached critical juncture, and his influence increased proportionately. Three years after the publication of *An Outline* Fukuzawa declared that the failure of Japanese efforts to renegotiate unequal treaties in the light of their modernization was irrelevant; even if the European powers had agreed, such treaties could have no genuine impact.<sup>102</sup> In the real world, nations gain advantage from their might, not their rational claims: ‘A few cannons are worth more than a hundred volumes of international law. A case of ammunition is of more use than innumerable treaties of friendship ... There are only two ways in international relations: to destroy, or to be destroyed.’<sup>103</sup> In the following year, he added: ‘A nation does not come out on top because it is in the right. It is right because it has come out on top.’<sup>104</sup> In *On Diplomacy*, published in 1883, he used an animal metaphor: ‘from the ancient time until today, the way that countries fight each other is like that among beasts ... As Japan is nothing but a country in the beast world, she will be eaten up by or will eat up other countries.’<sup>105</sup> Therefore, he concluded, unless Japan learned from the European experience regarding the advancement of industry, commerce, and importantly military, Europeans would soon invade.<sup>106</sup> His justification was: ‘When [European nations] use violence, we must be violent too. When others use deceitful trickery, we must do likewise.’<sup>107</sup> Throughout the 1880s and 1890s, Helen Hopper notes, Fukuzawa wrote and spoke relentlessly, underlining the urgency to draw equal to the West in military capacity and, thereby, helped to mould a public attitude of nationalism that supported Japan’s ventures in imperialism.<sup>108</sup>

Japan could not then fight back the Europeans, but it could demonstrate military strength and thus its civilized position in world affairs through the ‘othering’ of its neighbouring countries. In 1882, in the very first issue of his newspaper *Jiji Shinpo*, Fukuzawa argued that while Japan was advancing on the road to civilization, Korea and China were falling behind and thereby risking European invasion. Thus Japan should, in its own interest, try to civilize these countries. Indeed, Fukuzawa involved himself in an attempted coup in Korea in 1884, guiding a key figure behind it, Kim Ok-Kyun. The failure of the coup and Kim’s flight to Japan left Fukuzawa with little hope for the modernization of

<sup>101</sup> Quoted in O. Checkland, *Britain’s Encounter with Meiji Japan, 1868-1912* (1989), at 17.

<sup>102</sup> Hopper, *supra* note 81, at 120.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Y. Fukuzawa, *On Diplomacy* (1883), quoted in Zhang, *supra* note 15, at 152.

<sup>106</sup> Zhang, *supra* note 15, at 152.

<sup>107</sup> Y. Fukuzawa, *Jiji Shogen* (Current Affairs Briefly Discussed, 1881), quoted in Zhang, *supra* note 15, at 155.

<sup>108</sup> Hopper, *supra* note 81, at 110-11.



China and Korea.<sup>109</sup> The following year, his famous article ‘On Departure from Asia’ (*Datsu A-ron*) explained why Japan should disassociate itself from uncivilized neighbouring countries and move towards the West.<sup>110</sup> China and Korea were destined for ruin and European invasion unless great leadership guided them towards civilization. Thus Japan’s policy should be to ‘lose no time in waiting for the enlightenment of our neighbouring countries in order to join them in developing Asia, but rather to depart from their rank and cast our lot with the civilized countries of the West. ... Those with bad companions cannot avoid bad reputation. We must resolve to repudiate the bad companions of East Asia.’<sup>111</sup>

How, then should Japan deal with these countries, which would nevertheless continue to be, geographically at least, neighbours? Fukuzawa, rather predictably, advised the Japanese authorities to deal with China and Korea ‘exactly as the Westerners do’<sup>112</sup> and actively advocated for military intervention in Korea, as we shall see in the following section. He also supported the idea of an Anglo-Japanese Alliance, which later offered Japan a free hand on Asian affairs.<sup>113</sup> Thus, what initially appeared as ‘departure from Asia’ due to the backwardness of China and Korea, gradually paved the way for full-scale imperialism, with Japan guiding these ‘backward’ nations along the road to ‘civilization’.

In this way, Fukuzawa’s initial engagement with the European standard of civilization within the framework of pragmatism and subsequent reinterpretation of ‘civilization’ as self-defence fall in line with a long tradition of Japanese intellectual responses to dominant forces – be it *Kokugaku* (National Learning) reactions to Chinese ideological domination, or the propagation of *kokutai* (national-spirit) to the threat of Christianity. The *Kokugaku* and Mito scholars relied on the concepts of the Divine Kingdom, ancient Japanese Way, and unbroken Imperial lineage – all attributes of Japanese cultural superiority – to assert political dominance as a more civilized entity vis-a-vis other members of the Far Eastern regional order. Fukuzawa adopted the European notion of the ‘standard of civilization’ for the same purpose. However, frustration with European powers, shared by Fukuzawa and many of his contemporaries, regarding the unequal treatment of Japan despite its civilizational progress eventually made them question the very legitimacy of the ‘standard’ of European civilization, to the extent that to their mind imperialism itself appeared as the true standard of civilization. We turn to this construction of ‘civilization’ in the following section.

#### 4. BACK TO THE REGION: IMPERIALISM AS CIVILIZATION

In 1887, Foreign Minister Inoue Kaoru’s policy was ‘Westernisation symbolised by balls and garden parties in the Rokumeikan that were designed as an aid to procuring treaty revisions from the Western powers’.<sup>114</sup> As Ito Hirobumi, a key political figure of the Meiji regime and the first prime minister of Japan, emphasized, Japan’s aim from the very beginning was to be considered a civilized nation and to become a member of the comity of European and

<sup>109</sup> Ibid., at 121.

<sup>110</sup> Fukuzawa, ‘Datsu-A Ron’, *Jiji Shimpō*, 16 March 1885, trans. Sinh Vinh, ‘On Departure from Asia’, 11 *Fukuzawa Yukichi Nendan* [*The Yearbook of Yukichi Fukuzawa*] (1984), at 1.

<sup>111</sup> Ibid., at 4.

<sup>112</sup> Ibid.

<sup>113</sup> Checkland, *supra* note 101, at 14-16.

<sup>114</sup> S. Hirakawa, *Japan’s Love-Hate Relationship with the West* (2005), at 117.

American nations,<sup>115</sup> though it was never clear if Japan's civilization would be recognized. Given that there was no fixed standard of civilization, Japan was subject to the changing interests and fears of the civilized nations.<sup>116</sup> As Marius Jansen notes, '[e]quality and membership in the circle of great powers were not easily gained and when Meiji Japan thought itself ready to enter international politics' on a basis of respect, 'it proved to have more to learn'.<sup>117</sup> Even sympathetic foreigners doubted whether any non-European people could establish a stable constitutional government of its own accord.<sup>118</sup> When Hirobumi led a delegation to Europe in 1883 to study its various national constitutions, the Prussian jurist Rudolf von Gneist advised them that a nation requires a certain level of cultural advancement to create a truly meaningful constitution rather than merely 'an elaborately embellished piece of paper'. Gneist indicated that 'in Japan's case the drafting of a constitution might very well be meaningless'.<sup>119</sup>

Similarly, in Herbert Spencer's view, Japan's backwardness made the policies advised for Western societies unsuitable for Japan. He expressed this view to Arinori Mori and Kentaro Kaneko, influential figures within the Meiji government who became his friends.<sup>120</sup> Reflecting on his first discussion with Mori, about the reorganization of Japanese institutions, in 1873, Spencer wrote in his diary: 'I gave him conservative advice – urging that they would have eventually to return to a form not much in advance of what they had and that they ought not attempt to diverge widely from it.'<sup>121</sup> Contrary to his well-publicized position in favour of individual rights and more control on governments, his recommendation for Japan, therefore, was that 'popular' political power should be vested in the patriarchs, heads of families, or groups of families.<sup>122</sup> Spencer hoped no one would notice this double standard.<sup>123</sup>

As Ram Prakash Anand eloquently demonstrates, Meiji architects of modernization were equally aware of the inherent cultural bias of European international law that was instrumental for treaty renegotiation.<sup>124</sup> After all, Henry Wheaton's *Elements of International Law* (1836), the first book on international law to come to Japan – as a Chinese translation in 1864 – defined this law as something 'understood among civilized, Christian nations'; the precondition 'Christian' was deleted only in the third edition of 1846.<sup>125</sup> The racist underpinning of European international law was hardly overlooked by the Meiji politicians and thinkers.<sup>126</sup> However, rather than unveiling their agitation about this European attitude,

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<sup>115</sup> R. Tsunoda, W. T. de Bary, and D. Keene (ed.), *Sources of Japanese Tradition*, vol. II (1964), at 678.

<sup>116</sup> E. Benner, 'Japanese National doctrines in international Perspective', in N. Shimazu (ed), *Nationalism in Japan* (2006), at 29.

<sup>117</sup> M. B. Jansen, 'Modernization and Foreign Policy in Meiji Japan', in R. E. Ward (ed), *Political Development in Modern Japan* (1968), at 183.

<sup>118</sup> Benner, *supra* note 116, at 29.

<sup>119</sup> Hirakawa, *supra* note 114, at 49.

<sup>120</sup> Checkland, *supra* note 101, at 127.

<sup>121</sup> D. Duncan, *The Life and Letters of Herbert Spencer* (1908), at 161.

<sup>122</sup> Checkland, *supra* note 101, at 130.

<sup>123</sup> Duncan, *supra* note 121, at 319, 321.

<sup>124</sup> See, R. P. Anand, *Studies in International Law and History: An Asian Perspective* (Leiden: Martinus Nijhoff Publishers, 2004), 24-102.

<sup>125</sup> H. Wheaton, *Elements of International Law*, 3<sup>rd</sup> ed. (1846), at 46. See also, Lam, *supra* note 65, at 22.

<sup>126</sup> See, T. Osatake, *Bakumatsu Hishi Shinbun Waiso* (1995), at 3-4, cited in S. Yamauchi, 'Civilization and International Law in Japan during the Meiji Era (1868-1912)', 24 *Hitotsubashi Journal of Law and Politics*, no. 2 (1996), at 2.

the ruling elites of Japan continued to advocate Westernization and assimilation to become Europe's equal, for they were not courageous enough to refute it 'coldly and fearlessly'.<sup>127</sup>

Japanese opposition parties demanded a unilateral denouncement of the unequal treaties,<sup>128</sup> and they were finally renegotiated in 1894, with Britain abolishing extraterritoriality and special rights of foreign settlements; control over tariffs continued for another 12 years.<sup>129</sup> This change took place against the backdrop of Japan's increasingly aggressive foreign policy vis-à-vis China and Korea: only Japan's emergence as an imperial power signalled its 'progress' to the satisfaction of the West. Political and military elites in late-nineteenth-century Japan were convinced that imperialism equated civilization. As Erica Benner puts it, 'it was no longer enough to have a modern constitution, industrializing economy, and system of mass education. An aspiring leading nation was now expected to have overseas colonies, increasingly subject to direct forms of control.'<sup>130</sup> Thus, while the Charter Oath, issued immediately after the Meiji Restoration in 1868, indicated its apparent submission to the West,<sup>131</sup> the 1890 Imperial Rescript on Education was more nationalist, in line with the *Kokugaku* and Mito Schools of thought, mentioned earlier.<sup>132</sup>

As we have seen, historically Japan's claim to superiority, rhetorical as it sometimes was, was always defined in relation to subordinate Korea. By the 1870s, Japan had learned to translate cultural superiority into European-style imperial practices. Responding to a clash between Japanese surveying vessels and Korean coastal batteries in 1875, Japan sent several thousand troops to Korea to demand an apology, and more importantly, access to Korean ports. This Perry-style gunboat diplomacy resulted in the Treaty of Kanagawa of 1876, which opened three Korean ports to Japanese trade and gave permission for future coastal surveys.<sup>133</sup> Undermining China's longstanding influence, the treaty also declared Korea as an independent state with full sovereign rights. In mid-1894, an anti-foreign revolution broke out in Korea. The Korean king requested troops, and China sent them, but the Japanese reinforced their troops in Korea and took over the palace in Seoul. The war with China began in August that year.<sup>134</sup> Japan won decisively.

This war that signalled Japan's emergence as a super power in Asia was extremely popular among the Japanese. People clamoured for all the news they could get about battles; newspapers sent war correspondents to the front. Fukuzawa's newspaper *Jiji Shinpo* fed the excitement by publishing extra editions within the same day.<sup>135</sup> For Fukuzawa himself, this war was 'in reality a war between civilization and barbarism. Its result would decide the future of civilization. Accordingly, the Japanese who recognized themselves as the most progressive people of the East must be ready to fight not only for their country but also

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<sup>127</sup> Ibid.

<sup>128</sup> Checkland, *supra* note 101, at 13.

<sup>129</sup> See, Beasley, *supra* note 79, at 33. For a meticulous account of the renegotiation of unequal treaties, see, Jones, *Extraterritoriality in Japan* (1931).

<sup>130</sup> Benner, *supra* note 116, at 32.

<sup>131</sup> The Charter Oath of 1868 reads: 'All absurd usages of the past shall be broken through, and everything shall be based upon just and equitable principles of Nature. Wisdom and knowledge shall be sought throughout the world and thus the foundations of the Empire shall be strengthened.'

<sup>132</sup> Hirakawa, *supra* note 114, at 122-124.

<sup>133</sup> Beasley, *supra* note 79, at 43-4.

<sup>134</sup> S. Giffard, *Japan Among the Powers 1890-1990* (1994), at 14.

<sup>135</sup> Hopper, *supra* note 81, at 125.

civilization in the world.<sup>136</sup> It was a natural sequel to his *Departure from Asia (Datsu A-ron)* thesis. Hopper notes that Fukuzawa and other Meiji leaders justified the oppression of other Asian nations as a necessary step on the road to the national progress and development: ‘The fittest and strongest would survive, and, through the leadership of the more powerful, the weaker would eventually become civilized’.<sup>137</sup>

Another writer, Sohoo Tokutomi (1863–1957), abandoned his liberal position during the war years. He thought that the European powers’ refusal to revise the unequal treaties despite its reforms and progress brought shame and dishonour to Japan. Despite being the ‘most progressive, developed, civilised, and powerful nation in the Orient’ the Japanese could not escape ‘the scorn of the white people’, but Tokutomi argued that war could change that.<sup>138</sup> For him, the international prestige that came with the victory over China demonstrated that ‘civilization is not a monopoly of the white man’, and the Japanese too had ‘a character suitable for great achievements in the world.’<sup>139</sup> He thought the Japanese must now capitalize their rediscovered strength to establish domination over their East Asian neighbours and bring civilization to this region under Japanese protection.<sup>140</sup> Japan needed imperialism for self-defence.<sup>141</sup>

Britain and the US endorsed this depiction of imperialism as civilization, largely for their own imperial convenience. Britain’s agenda was to prevent Russia from expanding its influence in East Asia; the United States intended to check Britain. US President Theodore Roosevelt even advocated for a Japanese version of the Monroe Doctrine.<sup>142</sup> On 26 February 1895, Charles Denby, as American Minister to Peking, reported to the State Department that: ‘Of the two Oriental nations [i.e., Japan and China] which were opened to Western civilization by foreign guns, one accepted the results, the other rejected them. Japan is now doing for China what the United States did for Japan. She has learnt Western civilization and she is forcing it on her unwieldy neighbour. The only hope in the world for China is to take the lesson, rude as it is, to heart.’<sup>143</sup> Similarly, following Japan’s victory, the American historian William Griffis praised Japan’s ‘unquenchable ambition to humble China, to impress the whole world, and to make their country great’ and, thereby, fuelled the belief that ‘Japan’s credentials as the supremely civilised Asian nation authorised it to rescue its neighbours from their own backwardness, and hence from Western domination’.<sup>144</sup> Likewise, the Anglo-Japanese Alliance Treaty of 1902<sup>145</sup> recognized that Japan was especially ‘interested in a peculiar degree politically as well as commercially and industrially in Korea’ and, thereby, offered Japan ‘a license to think in imperial terms’ with no limits established for

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<sup>136</sup> Y. Fukuzawa, “Attack Peking Immediately” (Tadatini Peking wo Tukubesi), 4 *Zoku Fukuzawa Zenshuu* (1933), at 176-177, quoted in Yamauchi, *supra* note 126, at 8.

<sup>137</sup> Hopper, *supra* note 81, at 127.

<sup>138</sup> Quoted in J. D. Pierson, *Tokutomi Sohoo, 1863–1957: A Journalist for Modern Japan* (1980), at 229.

<sup>139</sup> *Ibid.*, at 235-236.

<sup>140</sup> Beasley, *supra* note 79, at 32.

<sup>141</sup> See, Pierson, *supra* note 138, at 318.

<sup>142</sup> Benner, *supra* note 116, at 28.

<sup>143</sup> See, H. Saito, *Japan’s Policies and Purposes: Selections from Recent Addresses and Writings* (1935), at 136.

<sup>144</sup> W. E. Griffis, *The Mikado’s Empire: A History of Japan from the Mythological Age to the Meiji Era* (2000), at 433.

<sup>145</sup> For full text of the document, see, I. Nish, *Anglo-Japanese Alliance, 1894-1907* (1966), at 216-217.

imperial ambition.<sup>146</sup> With British protection, Japan was in a better position to deal with the Russian occupation of Manchuria in China. Following a full-scale war beginning in 1904, and ensuing mediation offered by the US President, Japan sealed its first-ever victory in a war against a European power in 1905.<sup>147</sup>

Japanese scholar and art enthusiast Okakura Kakuzo (also known as Tenshin) (1863–1913) also candidly depicted imperialism as civilization. His 1905 book *The Awakening of Japan*, written originally in English and published in London apparently for non-Japanese readers,<sup>148</sup> recorded his frustration that Japan’s new constitutional government, educational system, reorganized military force and joining of the Geneva Convention, remodelled civil law code, and extensive commercial relations with the rest of the world were not enough to get the European powers to revise the obsolete treaties signed under the Tokugawa shogunate.<sup>149</sup> Depicting these treaties as a ‘bitter drop’ in a ‘cup of happiness’, he continued:

It was a hard task for us to convince the West that an Eastern nation could successfully assume the responsibilities of an enlightened people. It was not until our war with China in 1894–95 had revealed our military strength as well as our capacity to maintain a high standard of international morality that Europe consented to put an end to her extra-territorial jurisdiction in Japan. It is one of the painful lessons of history that civilization, in its progress, often climbs over the bodies of the slain.<sup>150</sup>

In his more popular *The Book of Tea*, published a year later, he maintained: ‘He [the West] was wont to regard Japan as barbarous while she [the East] indulged in the gentle arts of peace: he calls her civilized since she began to commit wholesale slaughter on Manchurian battlefields.’<sup>151</sup> Similarly, writing in 1907 the politician and journalist Takekoshi Yosaburoo portrayed Japanese imperialism as a source of pride, a symbol of equality with the West, and a contribution to modern civilization: ‘Western nations have long believed that on their shoulders alone rested the responsibility of colonizing the yet-unopened portions of the globe and extending to inhabitants the benefits of civilization; but now we Japanese, rising from the ocean in the extreme Orient, to take part in this great and glorious work.’<sup>152</sup>

International lawyers played an active role from the very beginning of this imperial project. When fifty-four shipwrecked Ryukyans were murdered by the Taiwanese in 1874, Japan sent an expedition force to attack Taiwan. China protested, demanding their immediate withdrawal, but Japan, on the advice of the French Professor Gustav E. Boissonade justified the expedition under the theory of occupation of *terra nullius*. Citing Vattel, Martens, Heffter, and Bluntschli, Japan argued that territorial sovereignty over land could be recognized only where the state claiming it effectively exercised governmental functions, and that eastern Taiwan, where the Ryukyuans were killed, was outside the Chinese jurisdiction. Hence, the Japanese occupation did not infringe Chinese sovereignty under international law. China eventually agreed in the Peking Agreement (1874) that Japan’s enterprise was ‘a just and rightful proceeding to protect her own subjects’.<sup>153</sup>

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<sup>146</sup> Giffard, *supra* note 134, at 26.

<sup>147</sup> For a detailed account of diplomacy leading up to the Russo-Japanese War, see, Beasley, *supra* note 79, at 80–82.

<sup>148</sup> Saaler argues that Kakuzo’s target audience were Indians. See, Saaler, *supra* note 45, at 5.

<sup>149</sup> O. Kakuzo, *The Awakening of Japan* (1905), at 179–181.

<sup>150</sup> *Ibid.*, at 182.

<sup>151</sup> O. Kakuzo, *The Book of Tea* (1964 [1906]), at 2–3.

<sup>152</sup> T. Yosaburoo, *Japanese Rule in Formosa*, trans. G. Braithwaite (1907), at vii.

<sup>153</sup> Kanae, *supra* note 31, at 15. See also, Lam, *supra* note 65, at 33.

Similarly, following the abolition of feudal clans in 1871, the Japanese imperial government placed the Ryukyu Islands – for centuries under the Sinocentric system a tributary state along with Japan – within the Kagoshima prefecture of Japan. The Ministry of Foreign Affairs took charge of foreign relations, including the conduct of treaties concluded between Ryukyu and other states, with Ryukyu continuing to send tributary missions to China.<sup>154</sup> In the aftermath of the Taiwan expedition, Ryukyuan affairs were transferred to the Ministry of the Interior in 1875, and Japan prohibited Ryukyuan missions to China. When the Ryukyuan officials resisted this order, arguing that Ryukyuans consider both China and Japan their parents, Japan's justification was the modern international law: 'We ... must change our old appearance completely, and everything should now be in accordance with the reason of the universe and the law of nations. The status of Ryukyu which has been subordinate to two states at the same time must be changed according to that reason and that law.'<sup>155</sup>

During wars with China and Russia, Japan had two legal advisors, Sakue Takahashi for the Navy and Nagao Ariga for the Army, both professors at the Naval Academy and elsewhere. Their mandate was to observe the law of war 'in the *samurai* spirit or according to the traditional spirit of brotherhood'.<sup>156</sup> Both later published monographs<sup>157</sup> demonstrating how Japan had incorporated European international law from the inception of its modernization and observed international law during the war, while China remained barbaric – killing non-combatants, destroying ships, offering a reward for the head of a Japanese general, engaging privateers to detain neutral merchant vessels, and killing prisoners, even sometimes hacking them to pieces.<sup>158</sup> Takahashi contrasted 'civilized' Japan with 'barbarous' China and concluded that Japan had the right of reprisal.<sup>159</sup> Likewise, Kanzo Uchimura depicted Japan's victory in the Russo-Japanese War as 'the upward progress of the human race' – free government, free religion, free education, and free commerce for 600,000,000 souls in Asia and, therefore, the war itself as a 'holy war'.<sup>160</sup> These imperial wars thus justified Japan's civilized position, as approved by European international lawyers<sup>161</sup> and proved by its seat at the Paris Peace Conference in 1919 as a Great Power.

## 5. CONCLUSION

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<sup>154</sup> Kanae, *supra* note 31, at 14-15.

<sup>155</sup> *Dai Nihon Gaiko Bunsho* (Documents relating to the Foreign Relations of the Japanese Empire), vol. VIII, 327-8, quoted in *ibid.*, at 15-6.

<sup>156</sup> Kuriyama, *supra* note 2, at 3.

<sup>157</sup> Takahashi joined Cambridge University and published *Cases on International Law during the Sino-Japanese War* (1899) and *International Law applied to the Russo-Japanese War with the Decisions of the Japanese Prize Court* (1908). Westlake wrote the introduction to his book on Sino-Japanese War and Holland contributed a preface. Ariga produced similar books in French: *Law guerre sino-japonaise au point de vue du droit international* (1896) and *La guerre russo-japonaise au point de vue du droit international* (1908). See *ibid.* For other scholarly works concerning the Russo-Japanese War, see, F. Ito, 'One Hundred Years of International Law Studies in Japan', 13 *The Japanese Annual of International Law* (1969), at 23.

<sup>158</sup> See, Yamauchi, *supra* note 126, at 13.

<sup>159</sup> *Ibid.*

<sup>160</sup> U. Kanzo, *Justification of the Korean War, Kokumin no Tomo* (A friend of the nation), vol. XXV (1894), at 116-123, quoted in Yamauchi, *supra* note 126, at 8.

<sup>161</sup> See, for example, J. Westlake, 'Introduction', in S. Takahashi, *Cases on International Law during the Chino-Japanese War* (1899), at xv-xvi; T. E. Holland, *Studies in International Law* (1898), at 114-115.

Taken together, this story of Japan's engagement with the nineteenth-century European notion of the standard of civilization against the backdrop of its longstanding practice of dealing with dominant forces in the regional context help us better understand the ideological structure of Japan's engagement with European powers and also with its Asian neighbours. While Japan's engagement with the nineteenth-century European idea of the standard of civilization took various forms – from self-defence to imperialism – the pattern of this engagement makes better sense in the context of Japanese responses to the pre-existing hierarchical regional order of the Far East. As we have seen, as part of a hegemonic regional order based on cultural superiority, Japan historically deconstructed and reconstructed the meaning of that cultural superiority. Japan accepted the dominance of China in the Confucianism-oriented Sinocentric regional order since the time of its first recorded history. Nevertheless, by the seventeenth century, Japan not only challenged China's position as the centre of the universe but also gradually questioned the legitimacy of Confucianism, which was by then depicted as a foreign ideology. Japanese scholars developed their own nationalist logic of regional dominance based on the ancient Japanese Way of the Divine Kingdom and, with that, on the unbroken lineage of the Imperial family, to completely break with Chinese ideological hegemony. Also, faced with the emerging threat of European imperialism, early nineteenth-century scholars demonized Christianity and European civilization and advocated for a national-spirit (*kokutai*) by reinventing the ancient Way in line with National Learning.

It is against this historical backdrop that following the Meiji Restoration, Japanese intellectuals gave the European idea of the standard of civilization various new meanings, in line with Japan's military strength and political convenience. In Fukuzawa's writings, 'civilization' came to appear as a language of self-defence. He advocated for learning from Western civilization and setting it as the goal for Japan, but refrained from attributing any inherent value to it. He rather conceived of civilization within an instrumental framework of partisan, biased national interest: European civilization as the means of preserving independence, not as an end. The concept of civilization as self-defence morphed into the proposition that imperialism was civilization. What facilitated this shift was indeed the realization by the protagonists of Japanese modernization that their march towards civilization would not secure necessary recognition as a civilized nation from the West. This moment of frustration and uneasiness, often symbolized by the continuation of the unequal treaty regime despite Japan's wholehearted Westernization, triggered more active persuasion of Western-style imperialism against neighbouring states. The political and military elites in the late-nineteenth century Japan were indeed convinced that imperialism equated civilization. This policy of imperial pursuits saw fruition as the Western powers finally agreed to renegotiate unequal treaties – only after Japan secured victory in an imperial war against China.

In general, this contextualization of the nineteenth-century encounter between Europe and such an insular island-nation as Japan – within the framework of a pre-nineteenth century hierarchical regional order and the dynamic process of normative contestation therein – underscores the limits of Eurocentrism in international law scholarship. Recent efforts to acknowledge contributions of semi-peripheral elites to the development of international law since the mid-nineteenth century are therefore also limiting and do not fully break with

Eurocentrism, in that they explain such contributions essentially as responses to the European international legal order.<sup>162</sup> Japan's normative response to the nineteenth-century European civilization, or the development of Japanese international law ostensibly since then, or Japan's imperialism towards its Asian neighbours later in that century – none of these took place in a vacuum. Far from being merely a result of the encounter with Europe in the mid-nineteenth century, cultural hierarchy and hegemony have been omnipresent in the Far Eastern regional order, in which Japan engaged with its neighbours. While this paper does not claim any linear causal connection between any particular pre-modern Japanese ideology and Japanese imperialism since its modernization, we have however demonstrated that Japan's relationship with Europe and its hegemony towards its neighbours was informed and shaped by a preexisting hierarchical order in the Far East.

By highlighting not only rich varieties of rules and vocabularies governing international relations in the non-European world but also the hegemonic underpinning of those non-European orders, this narrative thus highlights the relevance of non-European regional orders in the discourse on international legal history but simultaneously exposes asymmetric power relations within those orders with reference to the local varieties of civilizational discourse. In this sense, this contextualization of the engagement with the nineteenth-century notion of the standard of civilization from Japanese perspectives raises a more general question about the inherent relationship between hegemony and international law. This also offers a framework for further research into the structures of other pre-colonial regional orders and the way they inform present-day regional asymmetric power relations.

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<sup>162</sup> See, for example, A. B. Lorca, *Mestizo International Law: A Global Intellectual History 1841 – 1933* (2014).